

BEFORE THE
Office of Policy, Office of Economic, Electricity and Natural Gas Analysis
UNITED STATES OF AMERICA
Department of Energy

Public Notice of Inquiry)
Interstate Electric Transmission System;)
Electric Reliability Issues)
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COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners (“NARUC”) respectfully files these comments in response to the “Notice of Inquiry” (“Notice”) published by the Department of Energy’s Office of Policy, Office of Economic, Electricity and Natural Gas Analysis (“Department” or “DOE”) at 65 Fed. Reg. 69,753 (November 20, 2000).

NARUC, which represents the governmental agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of public utilities and common carriers, has been working with Congress and the various stakeholders to discuss and recommend appropriate federal policies to strengthen the reliability of the North American bulk power system. In fact, Commissioner Richard Hemstad of the Washington Utilities and Transportation Commission was a member of the original DOE Reliability Task Force. NARUC appreciates the DOE’s interest in the reliability of the electric grid and welcomes the opportunity to comment on the responsibilities and roles of the Federal Energy Regulatory Commission (FERC) and the States in a possible rulemaking on this issue.

NARUC shares the growing concerns with the reliability of the nation’s electric power system based on a number of factors, including imperfections in nascent wholesale generation and transmission markets. However, these problems cannot be solved only in

the supply/demand paradigm at the wholesale level. Individual States, charged with the safety, health and welfare of their citizens, are working with their electric utilities and with each other on a regional basis, to complement the actions of FERC, the North American Reliability Electric Reliability Council (NERC), and regional reliability councils.

In March 2000, NARUC passed a resolution adopting “Positions on Issues in Federal Legislation to Restructure the Electric Industry.” That resolution urged Congress to be guided by the positions adopted in the resolution as it developed new policies to govern the regulation, organization and operation of the electric utility industry. Specifically, that Resolution contains the following guiding principles on reliability:

- NARUC supports legislation establishing mandatory compliance with industry-developed reliability standards and providing explicit authority to FERC and the States to cooperate to enforce those standards.
- NARUC also supports legislation that includes workable mechanisms to support energy efficiency programs that enhance reliability
- NARUC cannot support reliability legislation that fails to provide a continuing role for States in ensuring reliability of all aspects of electrical service, including generation, transmission, and power delivery services or results in FERC preemption of State authority to ensure safe and reliable service to retail consumers.
- Congress should expressly include in legislation: (1) a savings clause to protect existing State authority to ensure reliable transmission service, and (2) a regional advisory role for the States
- NARUC is concerned that a savings clause limited only to "local distribution" could actually be harmful to consumers since it: (1) creates confusion over the responsibility to review service disruptions; (2) implicitly supports the view that legislation preempts State regulation of nondistribution related reliability; and (3) raises the question that NERC (a non-governmental entity) might otherwise cover distribution issues

Consistent with these positions, NARUC urges that any reliability proposals, either legislative or administrative, must provide a continuing role for States to ensure reliability of all aspects of electrical service, including generation, transmission, and power delivery services. Additionally, no proposal should result in FERC preemption of State authority to ensure safe and reliable service to retail consumers.

In support of these positions NARUC states as follows:

**I. NARUC SUPPORTS MANDATORY COMPLIANCE WITH
INDUSTRY STANDARDS WITH ENFORCEMENT BY FERC
AND THE STATES**

Recent events across the Nation provide ample evidence that as the electric industry continues to restructure its operations in response to procompetitive Federal and State policies, the industries' ability to provide reliable service is under significant stress. As the organization representing the State commissions responsible for ensuring safe, affordable and reliable service, NARUC believes there must be a strong and sustained regulatory response to these pressures at both Federal and State levels.

To that end, the March 2000 resolution states NARUC's support of reliability legislation that establishes mandatory compliance with industry-developed reliability standards and that provides explicit authority to FERC and the States to cooperate to enforce those standards. NARUC recognizes that historically, the high level of electric reliability experienced in the United States has been achieved through the voluntary efforts of the electric utility industry, through the NERC and the regional reliability councils, to police themselves with federal and state regulatory oversight. As the DOE correctly notes in the Notice, more competition in the electricity industry means the commercial incentives affecting both the owners of the transmission system and the parties transacting business on the system will be complex and not always consistent with the voluntary spirit of cooperation on which the NERC system relies. Other industries, however, have overcome this obstacle and have effective self-regulation. Recognizing this need for a transformation, various stakeholders have been working with NERC to develop a consensus approach on this issue.

While we commend the Department for its efforts in the reliability debate, including the work of the Task Force and the publication of this Notice, we continue to believe that there is no completely effective administrative substitute for such legislation. Given the limitations on the authority of both the Department and FERC, we anticipate that action by the new Congress will be needed to strengthen the reliability framework

through a system of enforceable standards. We stand ready to work in good faith with all parties to pursue this critical goal.

II. NARUC SUPPORTS RELIABILITY PROPOSALS THAT PROTECT EXISTING STATE AUTHORITY TO ENSURE RELIABLE TRANSMISSION SERVICE

Because its members are legally responsible for ensuring safe and reliable electricity, NARUC has supported and will continue to support proposals that preserve a meaningful role for the States in ensuring reliable service to retail consumers. In its March 2000 resolution, NARUC specifically supported the inclusion of language in any federal proposal that specifically preserves the authority of States to protect reliable service to consumers.

As noted, on behalf of its State commission members, NARUC has been a participant in the efforts coordinated by NERC to develop legislation to establish an electric reliability organization (ERO) to maintain the reliability of the North American bulk power system. NARUC supports allowing the ERO to have authority to develop, implement and enforce compliance with standards for the reliable operation of *only* the Bulk Power System. Additionally, NARUC supports language that specifically precludes the ERO and the FERC from exercising authority over setting and enforcing compliance with standards for the adequacy or safety of electric facilities or services. NARUC also supports language that specifies that nothing in the relevant federal reliability proposal should be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any ERO standard and also sets a time limit on FERC determinations on this issue.

Based on these positions, NARUC urges that language protecting the legitimate interests of States in requiring reliable service to retail customers be included in any

legislative or administrative proposal. Such specific language will further the goal of providing adequate, safe, reliable and efficient energy services to consumers.

III. NARUC SUPPORTS RELIABILITY PROPOSALS THAT CREATE A REGIONAL ROLE FOR THE STATES

Recognizing the strong regional implications of reliability proposals, NARUC supports reliability proposals that include a regional advisory role for the States. In the resolution adopted in March 2000, NARUC specifically affirmed its support of proposals that authorize States to form voluntary regional bodies to address regional transmission system issues. In that resolution, NARUC also supported federal legislation leading to voluntary formation of Regional Transmission Organizations (RTOs). NARUC urged that Congress should develop a mechanism for States to address ongoing concerns in RTO functions after the initial RTO development period. Such interests include reliability, market monitoring, pricing, congestion management, planning and interregional coordination.

NARUC continues to support voluntary regional efforts to establish RTOs under the Commission's order No. 2000. NARUC also supports efforts to develop mechanisms for States to address ongoing issues in RTO functions after the initial RTO development period. The interests of the States in RTO operations include reliability, market monitoring, pricing, congestion management, planning, and interregional coordination. As we noted in our advocacy in the Order No. 2000 proceeding, FERC should defer to States acting cooperatively and collectively on a regional basis. We recognize and welcome the FERC's efforts to reach out to States on a regional basis since Order No. 2000 was issued.

NARUC is concerned that state authority limited only to "local distribution" could actually be harmful to consumers since it creates confusion over the responsibility to review service disruptions. Such limitation to only "local distribution" implicitly supports the view that federal proposals preempt State regulation of nondistribution

related reliability. Finally, a limitation to “local distribution” raises the question that the NERC, a non-governmental entity, might otherwise cover distribution issues. For these reasons, NARUC urges that any federal proposal include a regional advisory role for the states

CONCLUSION

It is essential that any federal proposal on electric reliability must provide a continuing role for States to ensure reliability of all aspects of electrical service, including generation, transmission, and power delivery services and must not result in FERC preemption of State authority to ensure safe and reliable service to retail consumers. To that end, any proposal should protect existing State authority to ensure reliable transmission and should include a regional advisory role for the States. NARUC respectfully requests that the DOE carefully consider the foregoing positions.

Respectfully Submitted,

JAMES BRADFORD RAMSAY
General Counsel

SHARLA M. BARKLIND
Assistant General Counsel

**NATIONAL ASSOCIATION OF REGULATORY
UTILITY COMMISSIONERS
1101 VERMONT AVENUE, SUITE 200
WASHINGTON, DC 20005
(202) 898-1350
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